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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.524 OF 2007
WITH
CIVIL APPLICATION NO.907 OF 2007

Yashwant Sudam Mandavkar ...Appellant/ Applicant

V/s.

Dattaram Shankar Mandavkar & Ors. ...Respondents

Mr.G.J. Sabnis, Advocate, for the Appellant-Applicant.

CORAM : ABHAY S. OKA, J.

DATE : 23RD NOVEMBER, 2007.

P.C.:

1. Heard learned Advocate appearing for the appellant. The suit filed by the appellant-plaintiff for declaration of title, possession and injunction has been dismissed by the Trial Court and the Appeal preferred by the appellant before the District Court has been also dismissed.

2. The submission of the learned Advocate for the appellant is that the Courts below have held against the appellant on the issue of title only on the basis of entries in the revenue record and now the appellant has taken steps to get the said entries corrected. He, therefore, submitted that finding on the issue of

title could not have been recorded only on the basis of revenue entries.

3. I have considered the submissions. The finding of the Appellate Court recorded in paragraph 11 is that it was the case of the appellant that land bearing survey No.209 Hissa No.9 was held by the predecessors of the parties to the suit as the tenant. The Appellate Court has referred to the case made out by the appellant that as the number of members in the family increased, the appellant's father made a construction of a cattle shed and a house. The said Hissa No.9 was sub divided into different portions and Pot Hissa No.5 was allotted to the portion on which appellant's father carried out construction of a house. The finding of the Appellate Court is that merely because appellant's father made a construction on a part of the suit property which was sub divided thereafter, there was no transfer of exclusive title in favour of appellant's father.

4. In view of this finding recorded on the basis of the case made out by the appellant, the Courts below and especially the Appellate Court has held that the appellant has failed to establish exclusive title and possession. Even according to

appellant-plaintiff, the tenancy rights in respect of land bearing Survey No.209, Hissa No.9 were being enjoyed by the forefathers of the parties.

5. In view of the findings recorded by the Court below and especially Appellate Court, no substantial question of law arises. The Second Appeal is accordingly dismissed.

6. In view of the dismissal of the Second Appeal, the Civil Application therein does not survive and the same is disposed of.

[ABHAY S. OKA, J.]